

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

LORENZO GARCIA,

Petitioner,

v.

No. CV 15-0050 KG/CEG

FNU/LNU, WARDEN,

Respondent.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

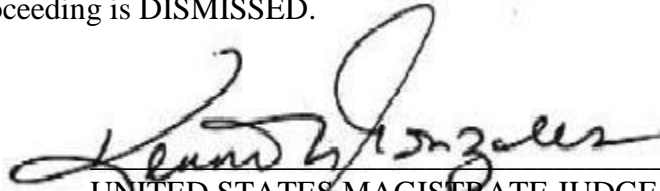
This matter is before the Court, *sua sponte* under Rule 4 of the Rules Governing Section 2254 Proceedings, on Petitioner's Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus. Petitioner was in custody at the time he filed the petition. The petition makes no factual allegations or claims regarding Petitioner's state criminal conviction, stating only that his case is "still in the jury phase." His custody, therefore, was not "pursuant to the judgment of a State court," § 2254(a), that he is now attacking, and thus the Court has no jurisdiction to determine whether Petitioner was "in custody in violation of the Constitution." *Id.*; *see also Broomes v. Ashcroft*, 358 F.3d 1251, 1254 (10th Cir. 2004) ("§ 2254 . . . requires habeas petitioners to be 'in custody' under the conviction [that they are attacking]"), *abrogated on other grounds by Padilla v. Kentucky*, 559 U.S. 356, 365 n. 9, 375 (2010). The petition must be dismissed. *See Broomes*, 358 F.3d at 1257.

The Court notes that Petitioner makes certain allegations concerning the conditions of his confinement. These allegations do not affect the foregoing analysis because they do not challenge the "fact or length of his confinement," *Preiser v. Rodriguez*, 411 U.S. 475, 494 (1973), and therefore provide no grounds in support of a habeas corpus petition, *see Nelson v. Campbell*,

541 U.S. 637, 643 (2004) (citing 42 U.S.C. § 1983 and *Preiser*). The Court also notes that Petitioner has made a number of similar allegations in civil rights complaints that he has filed in this Court. *See Requena v. Roberts*, 552 F. App'x 853, 855 (10th Cir. 2014).

Furthermore, under Rule 11 of the Rules Governing Section 2254 Cases, because Petitioner has failed to make a substantial showing of denial of a constitutional right, the Court will deny a certificate of appealability.

IT IS THEREFORE ORDERED that Petitioner's Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus is DISMISSED without prejudice for lack of jurisdiction, a certificate of appealability is DENIED, and this proceeding is DISMISSED.



UNITED STATES MAGISTRATE JUDGE